

CHAPTER NO. 52

HOUSE BILL NO. 2399

By Representative Newton

Substituted for: Senate Bill No. 2384

By Senator Miller

AN ACT relative to the levy of a privilege tax on the occupancy of any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourist camp, tourist court, tourist cabin, campground, motel or any place in which rooms, lodgings or accommodations are furnished for transients for a consideration in Polk County.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act unless the context otherwise requires:

(a) "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel "or other place of lodging" valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.

(b) "County" means Polk County, Tennessee.

(c) "Hotel" means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any establishment covered under Tennessee Department of Revenue Code SIC Major Group 70, which includes any hotel, inn, tourist camp, tourist court, tourist cabin, motel or any place in which rooms, lodging, or accommodations, are furnished to transients for a consideration.

(d) "Occupancy" means the use or possession, or the right to use or possession, of any room, lodgings, or accommodations in any hotel.

(e) "Operator" means the person operating the hotel whether as owner, lessee or otherwise, and shall include governmental entities.

(f) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(g) "Tax collection official" means the County Clerk of Polk County, or any other officer designated by the legislative body of Polk County.

(h) "Transient" means any person who exercised occupancy or is entitled to occupancy for any rooms, lodgings, or accommodations in a hotel for a period of less than thirty (30) continuous days.

(i) "Chamber" means the Polk County-Copper Basin Chamber of Commerce.

SECTION 2. The legislative body of Polk County is authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient, in the amount of three percent (3%) of the rate charged by the operator.

SECTION 3. The proceeds received by the county from the tax shall be designated and used as follows:

(a) The county shall retain one-third (1/3) of the tax proceeds to be applied to the county debt service fund.

(b) The county shall provide two-thirds (2/3) of the tax proceeds to the Chamber for the purposes of promoting tourism, furthering economic development and providing the Chamber with operating capital in order to do the same.

The act shall be made effective on the first (1st) day of July, 2005 to coincide with the first date of the fiscal year. All reservations taken prior to the effective date of this act shall be deemed exempt from said

taxation. Any reservations taken after the effective date of this act for July 1, 2005 or any period thereafter shall be subject to such taxation.

SECTION 4. Such tax shall be added by each and every operator to each invoice prepared by the operator for the occupancy of his or her hotel and be given directly or transmitted to the transient and shall be collected by such operator from the transient and remitted to Polk County.

When a person has maintained occupancy for more than thirty (30) continuous days, that person shall receive from the operator a refund or credit for the tax previously collected from or charged to him or her, and the operator shall receive credit for the amount of such tax if previously paid or reported to the county.

SECTION 5. The tax levied shall be remitted by all operators who lease, rent or charge for any rooms or spaces in hotels within the county, to the county clerk or other such officer as any be charged with the duty of collection thereof, said tax to be remitted to such officer not later than the twentieth (20th) day of each month for the preceding month. The operator is hereby required to collect the said tax from the transient at the time of the presentation of the invoice for said occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the county entitled to such tax shall be that of the operator.

SECTION 6. The clerk, or other authorized collector of the tax, shall be responsible for the collection of said tax and shall place the proceeds of such tax in accounts for the purposes stated herein. A monthly tax return shall be filed under oath with the clerk by the operator with such number of copies thereof as the clerk may reasonably require for the collection of such tax. The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the clerk and approved by the county legislative body prior to use. The clerk shall audit each operator in the county at least once per year and shall report on the audits made on a quarterly basis to the county legislative body.

The county legislative body is hereby authorized to adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this act, including the form for such reports.

SECTION 7. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part hereof will be assumed or absorbed by the operator or that it will be added to the rent, or that if added, any part will be refunded.

SECTION 8. Taxes collected by an operator which are not remitted to the county clerk on or before the due dates shall be delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and in addition shall be liable for a penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become part of the tax therein required to be remitted. Each occurrence of knowing refusal of an operator to collect or remit the tax or knowing refusal of a transient to pay the tax imposed is hereby declared to be a violation of this act and shall be punishable by a civil penalty not in excess of fifty dollars (\$50.00) for each occurrence. As used in this section "each occurrence" means each day.

SECTION 9. It shall be the duty of every operator liable for the collection and payment to the county of any tax imposed by this act to keep and preserve for a period of three (3) years all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the county, which records the county clerk shall have the right to inspect at all reasonable times.

SECTION 10. The county clerk in administering and enforcing the provisions of this act shall have as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67, Tennessee Code Annotated, or otherwise provided by law for the county clerks.

Upon any claim of illegal assessment and collection, the taxpayer shall have the remedies provided in Title 67, Tennessee Code Annotated, it being the intent of this Act that the provisions of law which apply to the recovery of state taxes illegally assessed and collected under the authority of this act, provided further, the county clerk shall possess those powers and duties as provided in Tennessee Code Annotated § 67-1-707 for the county clerks.

With respect and adjustment and settlement with taxpayers, all errors of county taxes collected by the county clerk under the authority of this Act shall be refunded by the county clerk.

Notice of any tax paid under protest shall be given to the county clerk and the resolution authorizing levy of the tax shall designate a county officer against whom suit may be brought for recovery.

SECTION 11. The proceeds of the tax authorization by this act shall be allocated to and placed in the General Fund of Polk County to be used for the purposes stated in Section 3 of this act.

SECTION 12. The privilege tax levied by this act shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes.

SECTION 13. The tax levied pursuant to the provisions of this act shall only apply in accordance with the provisions of Tennessee Code Annotated, Section 67-4-1425.

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Polk County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body of Polk County to the Secretary of State.

SECTION 16. For the purpose of approving or rejecting the provisions of this act, it shall become effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided by Section 15.

PASSED: May 4, 2005


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 17th day of May 2005


PHIL BREDESEN, GOVERNOR